STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DUWAYNE J. MAYES,

Defendant-Appellant.

UNPUBLISHED
November 21, 1997

No. 195635
Oakland Circuit Court
LC No. 95-142748 FH

Before: Jansen, P.J., and Fitzgerald and Young, JJ.

MEMORANDUM.

Defendant appeals by right his jury conviction for possession with intent to deliver marijuana, §7401(2)(c) of the Public Health Code, and of being a fourth offender, MCL 769.12; MSA 28.1084.

Defendant first contends that his Fourth Amendment rights were violated by the seizure and introduction into evidence of the marijuana forming the gravamen of the prosecution. This issue is entirely unpreserved, as no motion to suppress was made by defendant in the trial court, and this omission thereby deprived the trial court of the opportunity to conduct an evidentiary hearing and resolve credibility issues arising from conflicting testimony. *People v Childers*, 20 Mich App 639, 646; 174 NW2d 565 (1969). In any event, the issue is without merit. The verdict of the jury, based on the evidence defendant suggests would be adduced at a suppression hearing, resolved credibility issues in favor of the police and against the defendant. On the arresting officer's version of the incident, therefore, on being properly stopped for a traffic infraction, *Whren v United States*, 517 US ___; 116 S Ct 1769; 135 L Ed 2d 89 (1996), defendant volunteered to submit to a patdown search of his person. However, the search was never completed and no evidence was seized in the course of this search. Instead, defendant pushed two of the three police officers and ran away from them, and was thereupon apprehended and properly arrested for resisting and obstructing a police officer. The seizure of evidence was thereupon incident to arrest and is entirely independent of the prior patdown search. *People v Arterberry*, 431 Mich 381, 386; 429 NW2d 574 (1988).

Defendant's remaining argument on appeal is that the trial court erred in admitting the testimony of the arresting officer as an expert concerning the packaging of the marijuana seized from defendant

and the inferences to be drawn with respect to the issue of intent to deliver. Given the officer's experience in narcotics work and tenure as a law enforcement officer, the trial court did not abuse its discretion in this regard. *People v Ray*, 191 Mich App 706; 479 NW2d 1 (1991). In any event, any error in the admission of such testimony was harmless, since the inferences to be drawn from the physical evidence in this case were fairly self-evident, and could certainly have been argued by the prosecutor in closing argument without testimonial support. *People v Bahoda*, 448 Mich 261; 531 NW2d 659 (1995).

Affirmed.

/s/ Kathleen Jansen
/s/ E. Thomas Fitzgerald
/s/ Robert P. Young, Jr.